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## PILKERTON et al. v. ROBERSON.

Sept. 9, 1909. Rehearing Denied.

[65 S. E. 835.]

**1. Boundaries (§ 40\*)—Conflicting Evidence—Question for Jury.**—The location of a boundary, depending on conflicting evidence, is one for the jury.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 196-204; Dec. Dig. § 40.\* 2 Va.-W. Va. Enc. Dig. 598.]

**2. Trial (§ 105\*)—Failure to Object to Evidence.**—Declarations, though made under circumstances rendering them suspicious, so that, if objected to, they should have been excluded, having been admitted without objection, were to be considered as evidence of matters they tended to prove.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 261; Dec. Dig. § 105.\* 1 Va.-W. Va. Enc. Dig. 560.]

**3. Deeds (§ 38\*)—Description of Property.**—The call of a title bond and deed, "and from said tree up the hill about six rods to another white oak standing on a bench in a hillside," is not so vague and indefinite as would justify the court in rejecting it.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 38.\* 2 Va.-W. Va. Enc. Dig. 597.]

**4. Boundaries (§ 3\*)—Controlling Calls in Deed.**—Where a call of a deed is from one tree to another, then in a "straight line" passing said tree "to Hall's lines," and "with his lines" to Indian creek, but a straight line through the two trees will not reach the line of Hall, it must be so deflected to reach it, so as to be in accord with the next call, "with his lines" to Indian creek, which would not be the case if the line from the tree was run to Hall's line where it crosses said creek.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. § 32; Dec. Dig. § 3.\* 2 Va.-W. Va. Enc. Dig. 582.]

Error to Circuit Court, Wise County.

Action by one Roberson against one Pilkerton and others. Judgment for plaintiff. Defendants bring error. Affirmed.

*Ayers & Fulton*, for plaintiffs in error.

*Bond & Bruce* and *Irvine & Morrison*, for defendant in error.

## SAMUELS v. COMMONWEALTH.

Nov. 26, 1909.

[66 S. E. 222.]

**1. Witnesses (§ 48)—Disqualification—Conviction for Perjury—Conviction in Federal Courts.**—Rev. St. U. S., § 5392 (U. S. Comp.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.